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\*NOT ADMITTED TO DC BAR

November 23, 2004

Mr. Jeff S. Jordan  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5581

Dear Mr. Jordan:

As counsel for Citizens for a Sound Economy, we hereby respond to the Complaint filed in the above designated MUR.

Citizens for a Sound Economy ("CSE"), which recently changed its name to FreedomWorks, Inc., is a § 501(c)(4) membership corporation.

Initially, CSE notes that the Complaint is based in part upon hearsay contained in newspaper articles. *See e.g.*, paragraph 33 of the Complaint. As the attached affidavit demonstrates, nearly all of the allegations contained in the Complaint are erroneous. For example, CSE did *not* circulate any petitions for the Nader campaign.

CSE did, however, pay for and operate a phone bank urging its members to sign petitions to place Nader on the ballot. The purpose of the calls is irrelevant; however, CSE has stated that urging people to sign petitions merely furthers CSE's efforts of voter outreach and voter education and helps to broaden the debate by increasing ballot access. CSE believed that having Nader on the ballot would highlight key economic issues and the candidates' positions on issues of importance to CSE and its members, thereby increasing debate on these issues.

**Counts 4 and 5**

Complainant alleges that CSE's phone bank activities constituted prohibited and unreported in-kind contributions and expenditures with the Nader campaign.

The term "contribution" is partly defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office" or "the payment by any person of compensation for the personal services of another person which are rendered to a political

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committee without charge for any purpose.” 2 U.S.C. § 431(8)(A)(i) and (ii). The term “contribution” does *not* include “any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization.” § 431(8)(B)(vi).

As reflected in the definition of contribution, something of value must be *given* to a candidate, party committee or political committee for the purpose of influencing a federal election. In-kind donations of any goods or services without charge or at a discount are also considered treated as contributions.

The facts clearly indicate in this case that nothing was *given* or *donated* to Nader for President 2004. Nor did CSE pay the compensation of another person for services rendered to the Nader campaign. As the attached affidavit shows, CSE did not coordinate its phone calls with Nader for President 2004. CSE had no contact with the Nader campaign regarding the intended audience, timing or substance of the script. Thus, CSE’s phone calls were an independent disbursement, which cost less than \$400.00. The attached affidavit also refutes Complainant’s allegation in paragraph 33; only the telephone numbers of its members in Oregon were used to make the calls.

Additionally, the cost of the phone calls cannot be considered to be a contribution because they are specifically excluded from the definition of contribution. Specifically, the phone calls do not constitute an expenditure under § 441b(b) because they were made to members of CSE, a fact that is not mentioned in the Complaint. Urging people to sign petitions merely furthered CSE’s efforts of voter outreach and voter education and helped to broaden the debate by increasing ballot access. CSE believed that having Nader on the ballot would highlight key economic issues and the candidates’ positions on these issues, and would increase public knowledge of such issues.<sup>1</sup> A finding that encouraging individuals to sign a petition to get a candidate on the ballot is equivalent to urging them to vote for or against a candidate will have unintended consequences. Not only will it limit debate, it will result in less informed citizens and decreased participation in our democratic process.

Finally, Complainant’s allegations in paragraph 37 are easily refuted. As the attached affidavit shows, CSE did not circulate petitions or gather signatures. Nor is there anything impermissible if CSE were to encourage its members to volunteer to circulate the petition because CSE is free to communicate with its members on any topic

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<sup>1</sup> If the Commission finds that the script does not contain express advocacy, then the cost of the communication cannot be a contribution. As the court in *Orloski v FEC*, 759 F.2d 156, 163 (D.C. Cir. 1986) noted, “Under the Act this type of ‘donation’ is only a ‘contribution’ if it first qualifies as an ‘expenditure’ and, under the FEC’s interpretation, such a donation is not an expenditure unless someone at the funded event expressly advocates the re-election of the incumbent or the defeat of an opponent or solicits or accepts money to support the incumbent’s re-election.” As noted above, the communication does not meet the definition of expenditure, was not coordinated, and, therefore, cannot be regulated as a contribution.

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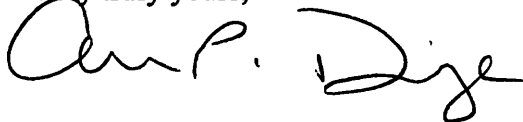
and may expressly advocate the election or defeat of a candidate in these communications.

In paragraph 31, Complainant quotes a portion of a press release to demonstrate CSE's alleged "motives." However, motive is irrelevant because it is only the four corners of the document which may be examined. Complainant does not allege that the press release contains express advocacy, and an examination of the full press release demonstrates that there is no express advocacy in the document. Nevertheless, the press release supports CSE's belief that having Nader on the ballot would further voter education efforts – "but Oregon CSE members feel that having Nader on the ballot helps illuminate the strong similarities between the uber-liberal Nader and John Kerry." This statement does not convert CSE's independent phone calls to its members into an in-kind contribution or independent expenditure.

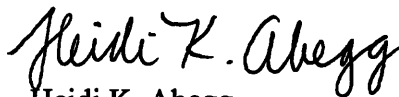
Complainant also alleges in paragraph 32 that "Oregon CSE's efforts on behalf of the Nader campaign are significant." Again, this allegation is irrelevant to the analysis of whether CSE's phone calls constituted an in-kind contribution or an independent expenditure (which was not alleged by Complainant).

Having shown above that no in-kind contribution was made, CSE respectfully requests that the Complaint be dismissed. If you have any questions, please do not hesitate to contact us.

Very truly yours,



Alan P. Dye



Heidi K. Abegg

Attorneys for Citizens for a Sound Economy

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# STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent.

MUR 5581

NAME OF COUNSEL: Alan P. Dye, Heidi K. Abugg, Frank Northam

FIRM: Webster, Chamberlain & Bean

ADDRESS: 1747 Pennsylvania Ave., NW

Suite 1000

Washington, DC 20006

TELEPHONE: (202) 785-9500

FAX: (202) 835-0243

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Judith M. Mulcahy

Print Name

11/10/04  
Date

JM Mulcahy  
Signature

Treasurer  
Title

RESPONDENT'S NAME: Citizens for a Sound Economy

ADDRESS: 1275 Pennsylvania Ave, NW, 10th Floor

Washington, DC 200

TELEPHONE: HOME

BUSINESS

26044143310

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

**In Re**

<b>Nader for President 2004</b>	)	
<b>Bush-Cheney '04, Inc.</b>	)	<b>MUR 5489</b>
<b>Citizens for a Sound Economy</b>	)	

**AFFIDAVIT OF RUSS WALKER**

I, Russ Walker, being duly sworn, do depose and say:

1. I make this statement in connection with MUR 5489 to record certain facts that are within my personal knowledge.

2. I am Northwest Director for Citizens for a Sound Economy and was involved in arranging for the calls at issue to be made.

3. The press release attached to this response contains a true and accurate transcription of the phone script used to make calls to Oregon CSE members, other than changes in the name of the school and the time that were made for each locality. No other script was used.

4. The decision to make telephone calls, and the development of the script, the intended audience, and the timing of the calls was made independently by CSE and without any coordination with Nader for President 2004, the Oregon Republican Party or Bush-Cheney '04.

5. CSE only used the telephone numbers of its members in Oregon to make the calls.

6. CSE did not purchase, rent or receive any telephone numbers from the Oregon Republican Party or Bush-Cheney '04. CSE did not sell, rent, or give any telephone numbers to the Oregon Republican Party or Bush-Cheney '04.

7. CSE has not circulated any petitions or collected any signatures for the Nader campaign. CSE has no plans to circulate petitions or collect any signatures for the Nader campaign.

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*Under* 8. CSE paid for the cost of the telephone calls and spent approximately  
\$ ~~4000~~ to make the calls.

9. CSE did not use Oregon Republican Party or Bush-Cheney '04 telephones  
to make calls.

Further affiant sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 11, 2004.

  
Russ Walker